

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LEROY K. BERRA,

Plaintiff,

v.

DENAY, Physician Assistant,

Defendant.

NO. 2:18-CV-0311-TOR

ORDER GRANTING DEFENDANT
DENAE PAUL, PA-C'S MOTION
FOR SUMMARY JUDGMENT

BEFORE THE COURT is Defendant Denae Paul, PA-C's Motion for Summary Judgment (ECF No. 58). This matter was submitted for consideration without oral argument. The Court has reviewed the record and files herein, and is fully informed.

Defendant's Motion was filed on May 1, 2020 and was noted for a hearing on June 22, 2020. ECF No. 58. Under this District's Local Rules, Plaintiff's response to the Motion was due on June 1, 2020. LCivR 7(c)(2)(A)(ii). On June 1, 2020, Plaintiff filed a Motion for Extension of Time to File Response. ECF No. 65. The Court granted this Motion and ordered Plaintiff to file his response by

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1 August 17, 2020. ECF No. 68. Plaintiff was provided the notice required by *Rand*
2 *v. Rowland*, 154 F.3d 952 (9th Cir. 1998) (en banc). ECF No. 61. Plaintiff failed
3 to file any response.

4 Failure to comply with filing deadlines “may be deemed consent to the entry
5 of an order adverse to the party who violates these rules.” LCivR 7(e). Because
6 Plaintiff’s extended filing date and the hearing date on Defendant’s Motion for
7 Summary Judgment have now passed and Plaintiff failed to file any opposition to
8 the Motion, the Court deems Plaintiff to have consented to entry of an Order
9 Granting Summary Judgment pursuant to LCivR 7(e). Substantively, Plaintiff
10 lacks evidentiary proof to support his allegations, thus, warranting dismissal at this
11 time.

12 Pursuant to 28 U.S.C. § 1915(a)(3), “[a]n appeal may not be taken in forma
13 pauperis if the trial court certifies in writing that it is not taken in good faith.” The
14 good faith standard is an objective one, and good faith is demonstrated when an
15 individual “seeks appellate review of any issue not frivolous.” *See Coppedge v.*
16 *United States*, 369 U.S. 438, 445 (1962). For purposes of 28 U.S.C. § 1915, an
17 appeal is frivolous if it lacks any arguable basis in law or fact. *Neitzke v. Williams*,
18 490 U.S. 319, 325 (1989).

1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 2 1. Defendant Denae Paul, PA-C's Motion for Summary Judgment (ECF No.
3 58) is **GRANTED**. All claims against Defendant Denae Paul, PA-C,
4 (aka Denay, Physician Assistant) are dismissed with prejudice.
5 2. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of
6 this Order would not be taken in good faith and would lack any arguable
7 basis in law or fact.

8 The District Court Executive is directed to enter this Order, enter judgment
9 accordingly, furnish copies to the parties, and **CLOSE** the file.

10 **DATED** August 31, 2020.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge